

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

AFFINITY CREDIT UNION,
GREENSTATE CREDIT UNION, and
CONSUMERS CO-OP CREDIT UNION,

Plaintiffs,

v.

APPLE INC.

Defendant.

CASE NO. 4:22-cv-04174-JSW

**~~[PLAINTIFFS' PROPOSED] ESI
PROTOCOL ORDER~~**

Place: Courtroom 5, 2nd Floor, Oakland
Judge: The Honorable Jeffrey S. White

1 Pursuant to Rule 26(f) of the Federal Rules of Procedure, Plaintiffs Affinity Credit Union,
2 Greenstate Credit Union, and Consumers Co-Op Credit Union (“Plaintiffs”) and Defendant Apple
3 Inc. (“Apple”) hereby agree that the following procedures shall govern discovery of Electronically-
4 Stored Information (“ESI”) in this case:

5 **1. COOPERATION**

6 The parties are aware of the importance the Court places on cooperation and commit to
7 cooperate in good faith throughout the matter consistent with this Court’s Guidelines for the
8 Discovery of ESI.

9 **2. SEARCH METHODOLOGY**

10 Following receipt of a request for production of documents, the parties shall timely confer
11 to attempt to reach agreement on appropriate search terms and queries, file type and date
12 restrictions, data sources (including custodians), and other appropriate computer- or technology-
13 aided methodologies. The parties shall continue to cooperate in revising the appropriateness of
14 the search methodology as necessary.

15 **3. FORMAT FOR PRODUCTION OF DOCUMENTS**

16 A. Except as otherwise provided for in this Stipulation, all documents existing in
17 electronic format shall be produced in accordance with the following specifications:

18 (a) Documents existing in electronic format shall be produced in multiple page,
19 searchable PDF format at a resolution of at least 300 dpi in accordance with the following:

20 (i) PDF files shall be produced along with Concordance/Opticon image
21 load files that indicate the beginning and ending of each document.

22 (ii) For documents which already exist in PDF format prior to
23 production (i.e., which the producing party receives from a client or third party in PDF format),
24 the producing party may provide them in that same PDF format, whether searchable or non-
25 searchable. For documents converted to PDF format prior to production, the producing party shall
26 make reasonable efforts to convert to searchable PDF.

27

28

(b) Documents existing in electronic format may also, or alternatively, be produced to the requesting party as single page group IV TIFF image files in at least 300 dpi for black and white images, or .JPG for images produced in color.

(c) Each document image file shall be named with a unique number (Bates Number). Documents produced in native format shall be assigned a Bates Number and be produced with a corresponding load file. File names shall not be more than twenty characters long or contain spaces.

(d) If a document is more than one page, the unitization of the document and any attachments and/or affixed notes shall be maintained as they existed in the original document.

10 (e) The full text of each document shall be extracted (“Extracted Text”) and
11 produced in a text file. The Extracted Text shall be provided in searchable ASCII text format (or
12 Unicode text format if the text is in a foreign language) and shall be named with a unique Bates
13 Number (e.g., the unique Bates Number of the first page of the corresponding production version
14 of the document followed by its file extension).

15 B. **Native Files.** Unless otherwise agreed to by the parties, files that are not easily
16 converted to image format, including but not limited to spreadsheet, database, audio, video, and
17 drawing files, shall be produced in native format. Documents produced natively shall be
18 represented in the set of imaged documents by a slipsheet indicating the production identification
19 number and confidentiality designation for the native file that is being produced. In addition,
20 native files shall be produced using a filename that bears the production number and confidentiality
21 designation for that native file. Any DAT file shall include a path to the native file. If a party
22 prints (whether in hard copy or to PDF or other electronic image) documents, or portions thereof,
23 that are produced in native format, the party shall mark any such printout with a footer containing
24 (1) the document's Bates number and (2) and confidentiality designation assigned by the producing
25 party to the document.

26 C. **De-duplication.** The producing party may de-duplicate its ESI production across
27 custodial and non-custodial data sources after disclosure to the requesting party, and the duplicate

1 custodian information removed during the de-duplication process shall be tracked in a custodian
2 field in the database load file.

3 **D. Email Threading.** The parties may use analytics technology to identify email
4 threads and need only produce the unique most inclusive copy and related family members and
5 may exclude lesser inclusive copies. Upon reasonable request the producing party shall produce
6 a less inclusive copy or missing metadata if, for example, a threaded email cuts off
7 to/from/cc/subject line/date information. An email is not a lesser inclusive copy if it contains any
8 attachments not included in subsequent emails within the same thread.

9 **E. Metadata.** Load files shall include, where applicable, the information listed in the
10 Table of Metadata Fields, attached as Exhibit A. However, the parties are not obligated to include
11 metadata for any document that does not contain such metadata in the original, if it is not possible
12 to automate the creation of metadata when the document is collected. The parties reserve their
13 rights to object to any request for the creation of metadata for documents that do not contain
14 metadata in the original.

15 **F. Databases.** Certain types of databases are dynamic in nature and will often contain
16 information that is neither relevant nor reasonably calculated to lead to the discovery of admissible
17 evidence. The parties shall meet and confer regarding whether such databases must be produced
18 and the appropriate format for productions from dynamic databases, including as to whether the
19 data may be produced in an alternate form, such as a report, data table, or other static format.

20 **G. Hardcopy or Paper Documents.** If the parties elect to produce hard-copy
21 documents in an electronic format, the production of hard-copy documents shall include a cross-
22 reference file that indicates document breaks and sets forth the custodian or custodian/location
23 associated with each produced document. Hard-copy documents shall be scanned using Optical
24 Character Recognition technology and searchable ASCII text files will be produced (or Unicode
25 text format if the text is in a foreign language), unless the producing party can show that the cost
26 would outweigh the usefulness of scanning (for example when the condition of the paper is not
27 conducive to scanning and will not result in accurate or reasonably useable/searchable ESI). Each
28

1 file shall be named with a unique Bates Number (*e.g.*, the unique Bates Number of the first page
 2 of the corresponding production version of the document followed by its file extension).

3 **H. Parent and Child Emails.** Parent-child relationships shall be maintained in a
 4 production. The parties shall produce email attachments sequentially after the parent email. Entire
 5 document families must be produced, even if only the parent email or an attachment to an email is
 6 responsive, except (1) junk files and non-user created content routinely excluded during
 7 processing, and (2) where one or more family members are withheld on the basis of attorney-client
 8 privilege or work product protection.

9 **I. Requests for Hi-Resolution or Color Documents.** The parties agree to respond
 10 to reasonable and specific requests for the production of higher resolution or color images.
 11 Nothing in this Stipulation shall preclude a producing party from objecting to such requests as
 12 unreasonable in number, timing or scope, provided that a producing party shall not object if the
 13 document as originally produced is illegible or difficult to read. The producing party shall have
 14 the option of responding by producing a native-file version of the document. If a dispute arises
 15 with regard to requests for higher resolution or color images, the parties shall meet and confer in
 16 good faith to try to resolve it.

17 **J. Production media and encryption of productions.** Unless otherwise agreed, the
 18 parties shall provide document productions in the following manner: All documents produced
 19 pursuant to any discovery request shall be served by SFTP or other similar secure electronic
 20 delivery method on the day of the production. The parties agree that productions under 20 MB
 21 may be made via email. Document productions served on parties shall not be provided on secure
 22 physical media (*e.g.* CDs, DVDs, external hard drives or flash drives) unless electronic service is
 23 impracticable. If the producing party chooses to make a document production via secure physical
 24 media, such production shall be served via courier or overnight mail. The requesting party may
 25 select the location and attorney to which the producing party is to send its production. A cover
 26 letter disclosing the Bates range(s) of documents being produced shall accompany the production
 27 and shall be transmitted via electronic mail at the time the production is served. The producing
 28 party shall encrypt the production data using WinRAR encryption or similar encryption

1 software/tools, and the producing party shall forward the password to decrypt the production data
 2 separately from the SFTP or other secure physical media to which the production data is saved.

3 **K. Foreign Language Documents.** All documents shall be produced in their original
 4 language. Where a requested document exists in a foreign language and the producing party also
 5 has an English-language version of that document that it prepared for non-litigation purposes prior
 6 to filing of the lawsuit, the producing party shall produce both the original document and all
 7 English-language versions. In addition, if the producing party has a certified translation of a
 8 foreign-language document that is being produced (whether or not the translation is prepared for
 9 purposes of litigation), the producing party shall produce the original document and the certified
 10 translation. Nothing in this agreement shall require a producing party to prepare a translation,
 11 certified or otherwise, for foreign language documents that are produced in discovery.

12 **L.** If a particular document warrants a different production format, the parties shall
 13 cooperate in good faith to arrange for a mutually acceptable production format, on a case-by-case
 14 basis.

15 **4. SOURCE CODE**

16 This Stipulation does not govern the format for production of source code.

17 **5. DOCUMENT PRESERVATION**

18 The parties have discussed their preservation obligations and needs and agree that
 19 preservation of relevant ESI shall be consistent with their obligations set forth in Rule 26 of
 20 the Federal Rules of Civil Procedure. The parties represent that they have issued litigation hold
 21 notices to individuals whom they reasonably believe to possess relevant documents. To the extent
 22 required, the parties represent that they have taken reasonable and proportionate steps to suspend
 23 or modify regular or automatic policies or practices that would result in the loss of relevant
 24 documents. The parties shall have a continuing obligation to take reasonable and proportionate
 25 steps to identify sources of relevant documents and preserve such documents.

26 **6. PRIVILEGE**

27 **A.** The parties agree to abide by Rule 26(b)(5) of the Federal Rules of Civil Procedure
 28 with respect to documents fully withheld from production on the basis of a privilege or other

1 protection, unless otherwise agreed or excepted by this Stipulation or Order. Privilege logs shall
2 include a unique identification number for each document and the basis for the claim (attorney-
3 client privileged or work-product protection). For ESI, the privilege log shall be generated
4 using available metadata, including author/recipient or to/from/cc/bcc names; the subject matter
5 or title; and date created. Should the available metadata provide insufficient information for the
6 purpose of evaluating the privilege claim asserted, the producing party shall include such
7 additional information as required by the Federal Rules of Civil Procedure. Unless otherwise
8 agreed by the parties, privilege logs shall be produced no later than 60 days after the deadline
9 for substantial completion of document productions. To the extent a party produces documents
10 after the deadline for substantial completion, and withholds from such production any documents
11 on the basis of privilege, that party shall provide a supplemental privilege log within 30 days of
12 the production. A document initially included on a privilege log may be produced after the close
13 of fact discovery, either by agreement or when the basis for the privilege asserted has been
14 successfully challenged by another party.

15 B. Redactions need not be logged so long as the basis for the redaction is clear on the
16 redacted document. A receiving party may request that the basis for a redaction be provided,
17 whereupon the producing party shall supply information sufficient to evaluate the privilege
18 asserted. Such information shall be provided within fourteen (14) days of the request, or on the
19 deadline for producing privilege logs under this Order, whichever is later.

20 C. With respect to privileged or work-product information involving outside
21 litigation counsel in this action and generated after the filing of the complaint, parties are not
22 required to include any such information in privilege logs.

23 D. Activities undertaken in compliance with the duty to preserve information are
24 protected from disclosure and discovery under Rules 26(b)(3)(A) and (B) of the Federal Rules of
25 Civil Procedure.

26 E. Pursuant to Rules 502(d) and (e) of the Federal Rules of Evidence, the production
27 of a privileged or work product protected document is not a waiver of privilege or protection from
28 discovery in this case or in any other federal or state proceeding. For example, the mere production

1 of a privileged or work product protected document in this case as part of a production is not itself
 2 a waiver. Nothing in this Order shall be interpreted to require disclosure of irrelevant information
 3 or relevant information protected by the attorney-client privilege, work product doctrine, or any
 4 other applicable privilege or immunity. The parties do not waive any objections as to the
 5 production, discoverability, admissibility, or confidentiality of documents and ESI. Moreover,
 6 nothing in this Order shall be interpreted to require disclosure of information subject to privacy
 7 protections as set forth in law or regulation, including information that may need to be produced
 8 from outside of the United States and/or may be subject to foreign laws.

9 **7. NON-PARTY DISCOVERY**

10 A. A party that issues a non-party subpoena (the “Issuing Party”) shall include a copy
 11 of this ESI protocol with the subpoena.

12 B. The Issuing Party shall be responsible for timely producing any documents obtained
 13 under a subpoena to all other parties.

14 C. If the non-party production is not Bates-stamped, the Issuing Party shall endorse
 15 the non-party production with unique prefixes and Bates numbers prior to producing them to all
 16 other parties.

17 **8. LIMITATIONS AND NON-WAIVER**

18 A. Pursuant to the terms of this ESI Protocol, information regarding search process
 19 and ESI practices may be disclosed, but compliance with this ESI Protocol does not constitute a
 20 waiver, by any party, of any objection to the production of particular ESI for any reason, including
 21 that it is irrelevant, undiscoverable, or otherwise inadmissible, unduly burdensome or not
 22 reasonably accessible, or privileged, nor does it constitute a waiver of any right to discovery by
 23 any party.

24 B. No party shall argue that disclosure of any search process or ESI practice constitutes
 25 a waiver of the attorney-client privilege or the attorney work-product doctrine. The parties
 26 expressly reserve all privileges and do not intend to waive any privilege by entering into or
 27 complying with this ESI protocol.

28 C. Nothing in this ESI protocol shall be construed to affect the discoverability of

1 information or the admissibility of discoverable information.

2 D. Nor shall anything in this ESI Protocol be construed to affect the authenticity of
3 any document or data.

4 **9. MODIFICATION**

5 This Stipulated Order may be modified by a Stipulated Order of the parties or by the Court
6 for good cause shown.

7 **IT IS SO ORDERED.**

8

9 Dated: March 29, 2024

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28


THE HONORABLE JEFFREY S. WHITE
United States Judge

~~ATTESTATION~~

I am the ECF user whose identification and password are being used to file the foregoing ESI Stipulation and [Proposed] Order. Pursuant to Civil Local Rule 5-1, I attest that all other signatories listed, and on whose behalf the filing is submitted, concur in this filing's content and have authorized such filing.

Dated: DRAFT

DRAFT

DRAFT

EXHIBIT A**TABLE OF METADATA FIELDS**

Field Name	Specifications Field Name	Field Type	Description (Email)	Description (E-Files/Attachments)
BegDoc	Unique ID (Bates number)	Paragraph	The Document ID number associated with the first page of an email.	The Document ID number associated with the first page of a document
EndDoc	Unique ID (Bates number)	Paragraph	The Document ID number associated with the last page of an email.	The Document ID number associated with the last page of a document.
BegAttach	Unique ID (Bates number) Parent-Child Relationships	Paragraph	The Document ID number associated with the first page of a parent email.	The Document ID number associated with the first page of a parent document.
EndAttach	Unique ID (Bates number) Parent-Child Relationship	Paragraph	The Document ID number associated with the last page of the last attachment to a parent email.	The Document ID number associated with the last page of the last attachment to a parent document.
Custodian	Custodian	Paragraph	The custodian/source of an email.	The custodian/source of a document.
All Custodians	All Custodians	Paragraph	All custodians/sources of an email.	All custodians/sources of a document.
Pages	Pages	Number	The number of pages for an email.	The number of pages for a document.
DateSent		Date (MM/DD/YY YY format)	The date the email was sent.	For email attachments, the date the parent email was sent.
Date Received		Date (MM/DD/YY YY format)	The date the email was received.	For email attachments, the date the parent email was received.

Field Name	Specifications Field Name	Field Type	Description (Email)	Description (E-Files/Attachments)
Author	Author Display Name (e-mail)	Paragraph	The display name of the author or sender of an email.	The name of the author as identified by the metadata of the document.
To	Recipient	Paragraph	The display name of the recipient(s) of an email.	The display name of the recipient(s) of a document (e.g., fax recipients).
From	From	Paragraph	The display name of the sender of an email.	
CC	CC	Paragraph	The display name of the copyee(s) of a email.	
BCC	BCC	Paragraph	The display name of the blind copyee(s) of an email.	
Subject	Subject (e-mail)	Paragraph	The subject line of an email.	The subject of a document from entered metadata.
Date Created		Date (MM/DD/YY YY format)		The date the document was created.
Date Modified		Date (MM/DD/YY YY format)		The last modified date from a loose file.
FilePath				Original file extension at the point of collection.
FileName				Original file name at the point of collection.
Confidentiality			Confidentiality level if assigned pursuant to any applicable Protective Order or stipulation.	Confidentiality level if assigned pursuant to any applicable Protective Order or stipulation.

1 Field Name	2 Specifications Field Name	3 Field Type	4 Description (Email)	5 Description (E- Files/Attachments)
6 Redacted	7	8	9 Indicates whether a document contains redactions.	10 Indicates whether a document contains redactions.
11 MD5 Hash	12	13 MD5 Hash	14 Unique MD5 Hash for email.	15 Unique MD5 Hash for document.
16 NativeLink	17	18 Paragraph	19 Native file link (native files only).	20
21 TextLink	22	23 Paragraph	24 Link to the associated text file (extracted text or OCR text).	25 Link to the associated text file (extracted text or OCR text).

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28